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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/931,841	08/16/2001	Paul Nadj	SIA-P033	4552

45640 7590 03/09/2005

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EXAMINER

FILIPCZYK, MARCIN R

ART UNIT PAPER NUMBER

2161

DATE MAILED: 03/09/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/931,841

Applicant(s)

NADJ ET AL.

Examiner

Marc R Filipczyk

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 16 August 2001.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-21 is/are pending in the application.
- 4a) Of the above claim(s) 1-4 and 11-21 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 5-10 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 16 August 2001 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

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DETAILED ACTION

Applicant's election without traverse of claims 5-10 in the reply filed on October 4, 2004 is acknowledged. Claims 5-10 are pending.

To expedite the process of examination Examiner requests that all future correspondences in regard to overcoming prior art rejections or other issues (e.g. amendments, 35 U.S.C. 112, objections and the like) set forth by the Examiner that Applicants provide and link to the most specific page and line numbers of the disclosure where the best support is found (see 35 U.S.C. 132).

Specification

The disclosure is objected to because of the following informalities: On page 32 line 4, the reference to (items) labels 210 and 220 are not in the figures. However, Examiner believes labels 151 and 152 map to the disclosed subject matter respectively.

The lengthy specification has not been checked to the extent necessary to determine the presence of all possible minor errors. Applicant's cooperation is requested in correcting any errors of which applicant may become aware in the specification.

Appropriate correction is required.

Claim Rejections - 35 USC § 101

35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claims 5-10 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

The basis of this rejection is set forth whether the invention is within the technological arts.

For a claimed invention to be statutory, the claimed invention must be within the technological arts. Mere ideas in the abstract (i.e., abstract idea, law of nature, natural phenomena) that do not apply, involve, use, or advance the technological arts fail to promote the “progress of science and the useful arts” (i.e., the physical sciences as opposed to social sciences, for example) and therefore are found to be non-statutory subject matter. For a method claim to pass muster, the recited processes must somehow apply, involve, use, or advance the technological arts.

In the present case, independent claim 5 only recites an abstract idea. The recited steps of merely using a method for priority scheduling in a pile by providing two queues and comparing their priorities do not apply, involve, use, or advance the technological arts since all of the recited steps can be performed in the mind of the user or by use of a pencil and paper. These steps only constitute an idea of how to determine a priority queue.

Since the claimed invention, as a whole, is not within the technological arts as explained above, claim 5, and claims 6-10 which depend from claim 5, are deemed to be directed to non-statutory subject matter.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 5-10 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Regarding claim 5, the segment, “priority scheduling in a pile” is indefinite. It is not clear what a pile is. Second, the “second priority” is indefinite. The prior step of the claim discloses the second queue has a first priority, not a second priority. Third, the feature of “determining priority between the first queue and the second queue” is indefinite. The priorities of the queues are the same thus no determination is necessary or desired. Last, “activating the first queue if the first priority is a higher priority” is indefinite. The claimed priorities are the same, note both queues have the same “first priority”, hence it is not clear which queue can be activated.

Regarding claims 6 and 7, “the value” is indefinite. It is not clear what values are claimed.

Regarding claim 8, “a root node” is indefinite. It is not clear what is the relationship between a root node and the other two nodes claimed. Second, “the event” is indefinite. It is not clear what an event is and how it differs from a queue.

Regarding claim 10, “a node” is indefinite. It is not clear what node is used (i.e., first node, second node, root node, or new node).

Regarding claims 6-10 depend from claim 5 and therefore contain the deficiencies of claim 5 in addition to other claimed deficiencies.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

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(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 5-10 are rejected under 35 U.S.C. 102(e) as best as the Examiner is able to ascertain as being anticipated by Cochran et al (U.S. Patent No. 6,701,324).

Regarding claims 5-10, Cochran discloses a method for priority scheduling: (abstract)
in a first event in a first node, comprising: (fig. 1A, collector 108c [first node])
providing a first queue (fig. 1A, collector 108c [first node] and fig. 4, CTOC 406 [first queue]), having a first sort index and a first data field, the first sort index including a first priority (fig. 4, item 412) and the first data field including a first event queue identifier (fig. 4, item 410);

in a second event in a second node, comprising:
providing a second queue (fig. 1A, collector 108b [second node] and fig. 4, CTOC 406 [second queue]), having a first sort index and a first data field, the first sort index including a first priority (fig. 4, item 412) and the first data field including a first event queue identifier (fig. 4, item 410);

(Note: indexes and priorities are unique for nodes and queues)

determining a priority for a highest priority queue and activate that queue (fig. 4, item 420a and fig. 5, item 508).

In addition, Cochran discloses a root node (item 110).

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Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Marc R Filipczyk whose telephone number is (571) 272-4019. The examiner can normally be reached on Mon-Fri, 8:30am-5pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Safet Metjahic can be reached on (571) 272-4023. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

MF
March 4, 2005


FRANTZ COBY
PRIMARY EXAMINER